

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

I. CLAIM STATUS AND AMENDMENTS

Claims 1-19 were pending in this application when last examined.

Claims 1-11 were examined on the merits and stand rejected.

Claims 12-19 are withdrawn as non-elected subject matter.

Claims 1, 5, 8 and 11 are amended herein to clarify the claimed invention. Support for these amendments may be found in the claims as originally filed.

Claims 2-4 are cancelled herein without prejudice or disclaimer thereto.

No new matter has been added.

II. INDEFINITENESS REJECTION

In item 6 on page 2 of the Office Action, claims 1-11 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. The Examiner is concerned with the meaning of “derivative thereof” and the term “special”.

Applicants note that the claim 1 is amended herein to delete “a derivative thereof” and “special” without prejudice or disclaimer thereto.

For these reasons, Applicants respectfully submit that this rejection is untenable as applied to the amended claims and should be withdrawn.

III. NOVELTY REJECTIONS

A) In item 9 of the Office Action, claims 1, 10 and 11 were rejected under 35 U.S.C. § 102(b) as anticipated by Brunner et al.

Applicants note that the claims as amended herein do not include the CpG-containing oligonucleotide disclosed in Brunner et al.

B) In item 10 of the Office Action, claims 1 and 2 were rejected under 35 U.S.C. § 102(c) as anticipated by Karras.

Applicants note that Karras does not disclose the nucleic acid of amended claim 1.

C) In item 11, claims 1-4 and 6-11 were rejected under 35 U.S.C. § 102(b) as anticipated by Raz et al.

Claims 2-4 are cancelled herein without prejudice or disclaimer thereto. Claims 6-11 depend directly or indirectly upon claim 1. Claim 1 is rendered clearer herein by deletion without prejudice or disclaimer thereto of the phrase “derivative thereof”. Further, claim 1 is amended to require the nucleic acid has one of the following elements:

a nucleic acid base or a plasmid having the nucleic acid containing the nucleic acid base, wherein the nucleic acid base is at least one selected from the group consisting of 8-oxoadenine, 2-oxoadenine, 5-hydroxyuracil, 5-formyluracil, 5-formylcytosine, 8-nitroguanine, thymine glycol, cytosine glycol, hypoxanthine, oxanine, pyrimidine dimer, O⁶-methylguanine, O⁶-methylthymine, and a microbial nucleic acid-specific modified base, wherein the microbial nucleic acid-specific modified base is selected from the group consisting of N⁶-methyladenine, 5-hydroxymethyluracil and 5-hydroxymethylcytosine.

Claim 6 further limits the immunomodulator of claim 1 to one comprising as an active ingredient a nucleic acid containing a microbial nucleic acid-specific non-methylated CpG sequence or a plasmid having the nucleic acid containing the microbial nucleic acid-specific non-methylated CpG sequence. Claim 7 depends on claim 6 and specifies that the nucleic acid has the base sequence of SEQ ID NO: 2.

Applicants note that the Examiner contends that Raz et al. discloses Applicants' SEQ ID NO: 2 (see SEQ ID NO: 7 of Raz et al.) as well as modified nucleic acid bases in the claims and in paragraphs 34, 48 and 49. Applicants respectfully submit that the Examiner has not contended that Raz et al. teaches the nucleic acid of amended claim 1. Therefore, claim 1, and claims dependent thereon, are not anticipated by Raz et al. It follows that claim 7, which depends on claim 1, is not anticipated by Raz et al., even if Raz et al. discloses the sequence claimed in claim 7.

D) In item 12 of the Office Action, claims 1-3 and 6 were rejected under 35 U.S.C. § 102(b) as anticipated by Moriya. Applicants note that amended claim 1 does not include 8-oxoguanine as disclosed in Moriya.

For these reasons, Applicants respectfully submit that the grounds of these rejections have been overcome. Therefore, these rejections are untenable as applied to the amended claims and should be withdrawn.

IV. INFORMALITY REJECTION

In item 13 of the Office Action, the Examiner refers to the informality in claim 2, namely “dimer” appears to be misspelled as “dimmer”.

Applicants note that claim 2 is cancelled herein without prejudice or disclaimer thereto.

Therefore, Applicants respectfully submit that this concern of the Examiner has been fully addressed.

V. FILING DATE

Applicants respectfully note that the filing date of the instant application should read August 24, 2006, because an executed Declaration was filed on this date. Applicants requested correction of the filing date in a Request for Correction of Assignment Recordation Notice, filed October 3, 2006.

Applicants respectfully request that the Examiner check the file and confirm the correct filing date.

CONCLUSION

In view of the foregoing Amendments and Remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

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